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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER T. WEBB, Defendant and Appellant.	B287525 (Los Angeles County Super. Ct. No. ZM026522)

APPEAL from judgment of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Affirmed.

Paul R. Kraus, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, David E. Madeo and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Christopher T. Webb appeals from an order of civil commitment under the Sexually Violent Predators Act (SVPA). (Welf. & Inst. Code, § 6600 et seq.)[1] A jury determined beyond a reasonable doubt that he is a sexually violent predator as described by the SVPA. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 2008, Webb moved to California from New York with his girlfriend. Beginning in February 2009, he sexually assaulted four women, T.M., Alexandria O., Precious S., and D.W. In connection with his assaults on Alexandria O. and Precious S., he pled no contest to one count of assault with intent to commit rape and one count of misdemeanor sexual battery. (Pen. Code, §§ 220, subd. (a), 243.4, subd. (e)(1).) Webb was sentenced to six years in prison for the aggravated assault, and a concurrent six-month term for the battery. The trial court suspended execution of the sentence and placed Webb on formal probation for five years on condition he serve 115 days in county jail, with credit for 115 days. After his assault on D.W., he was found to have violated the probation condition that he obey all laws. The trial court executed the previously suspended six-year sentence.

T.M.

On February 17, 2009, high school student T.M. was waiting for her mother at the Beverly Hills public library. She was sitting at a computer station when Webb engaged her in conversation. As T.M. left to meet her mother, Webb waved her over to a secluded corner of the library. When she approached him, he pulled her wrist and hugged her to him. He attempted to put his hands down her pants, but she pulled on his wrist before

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

he could touch her vagina. She struggled and managed to slip out of her backpack to get away from him. She ran to the front of the library where her mother and a friend were waiting for her. When she looked back, her backpack had been left on the stairs. T.M. pointed Webb out to her mother and they reported the incident to the police. T.M. and her mother decided not to pursue the matter and Webb was not prosecuted for this offense.

Alexandria O.

On February 21, 2009, 22-year old Alexandria O. was working at a kiosk at The Grove shopping center when Webb approached her. She initially thought he was a flirtatious customer, but he began to touch her hair and "talked about wanting to eat [her] out." He said "[h]e wanted to play with [her] kitty cat and do dirty things to [her]." He refused to leave her alone despite her repeated requests. During their encounter, he put his hand on her leg and began to move it towards her crotch. She pushed his hand away. She called security when Webb left her briefly to speak to someone he knew. While she was on the phone with security, Webb returned and demanded a hug. His hand lingered across her breasts and she pushed him away. When the security guard arrived, Webb walked away.

Precious S.

On March 5, 2009, 15-year-old Precious S. was walking to a homeless shelter for teens in Hollywood when Webb offered her a ride. He gave her his jacket and told her he parked his car at a nearby motel. When they arrived at the motel, Precious asked to use the bathroom. Webb checked into the motel and Precious went into the bathroom. When she came out, Webb was wearing nothing but a shirt.

Webb demanded Precious take her clothes off. She took off her top and her shoes. When she refused to take anything else off, he hit her. She began to scream and he choked her to stop her. He forced her to orally copulate him. However, he was dissatisfied with her attempts and said he wanted to insert his penis inside of her. She objected, telling him she was only 15 years old and a virgin. He digitally penetrated her instead. Precious managed to escape when Webb allowed her near the front door.

D.W.

On September 27, 2009, 17-year-old D.W. met Webb as she was walking to a bus stop late at night. He claimed he previously met her at the Fox Hills mall and asked if she wanted to go to a nightclub with him. She agreed, but needed to use the restroom. Webb followed her into the restroom at a rehabilitation center. In the restroom, Webb prevented her from leaving while he touched her breasts and her buttocks, and tried to put his hands in her pants. He told her he wanted her to "suck his dick." She refused and he ultimately let her go. They continued walking to the nightclub, but discovered it did not open until 2:00 a.m. They went to a nearby bar for a drink and kissed.

Webb led D.W. outside to a parking lot. There, he pinned her against a parked truck, pulled out his penis, and again told her "to suck his dick." When she refused, Webb slapped D.W. and threatened to "fuck" her up. He hit her and pushed her head towards his penis. He then pushed her to the ground, took off her sweat pants and underwear, and digitally penetrated her. She begged him to stop, but he ignored her.

D.W. found a highlighter in her purse and stabbed Webb in the eye with it. She ran across the street and a custodian helped her report the incident. Because D.W. was unavailable for trial, Webb was not separately prosecuted for his assault on her.

Conduct While in Prison

While in custody, Webb received infractions for aggressive or sexually inappropriate behavior. On May 22, 2014, he told a female correctional officer that she needed to "get banged" and simulated masturbation with his hand. Several months later, he called another female correctional officer a "skanky bitch." He also threatened a male officer, "I'll fuck you up if you take these cuffs off." He also assaulted a corrections officer in 2011 and a fellow inmate in 2014.

On October 20, 2015, Webb used his steel bunk bed as a battering ram against his cell door, which came off one of its hinges. Additional corrections officers were called to subdue him. Webb also threatened to tie up a fellow inmate's mother and sexually assault her. He told the inmate he was getting out of his cell to "fuck [him] in the ass!" Webb received a two-year prison sentence for damaging jail property as part of a plea agreement.

2015 SVPA Petition

In anticipation of his release from prison for his initial sentence, the Department of Corrections and Rehabilitation referred Webb to the Director of State Hospitals for an evaluation under the SVPA. Psychologists Christopher G. Matosich and Mary Jane Alumbaugh evaluated Webb to determine whether he met the SVPA criteria to be a sexually violent predator (SVP). Dr. Alumbaugh concluded Webb did not, and Dr. Matosich concluded he did. Due to the difference in their opinions, Webb was further evaluated by independent psychologists Thomas

MacSpeiden and Mark Patterson (the 2015 evaluators). They both found Webb met the SVPA criteria. Based on the 2015 evaluators' opinions, the People filed a petition of commitment under the SVPA in the superior court on May 15, 2015.

While he was in custody awaiting the probable cause hearing, Webb was charged with damaging jail property, as described above. On March 22, 2016, the trial court found probable cause to believe Webb was an SVP as described by the SVPA and ordered that he be transferred to Coalinga State Hospital to await trial on the SVP petition. Two days later, Webb was sentenced to two years in state prison for the in-prison offense. As a result, the trial court vacated its initial order and ordered the Sheriff's Department to transfer Webb to Coalinga State Hospital after completion of his second state prison sentence.

2017 SVPA Proceedings

Close to the time of his anticipated release for his second state prison sentence, Webb was again referred by the Department of Corrections and Rehabilitation to the Department of State Hospitals to be evaluated under the SVPA. Only one psychologist found Webb met the SVPA criteria, Harry Goldberg. Dr. Goldberg diagnosed Webb with "other specified personality disorder with antisocial and narcissistic personality traits" and believed it predisposed him to reoffend.

A second set of independent evaluators, Robert Owen and Douglas Korpi (the 2017 evaluators), both found he did not meet the SVPA criteria. Dr. Korpi diagnosed Webb with a mental disorder, but believed it did not predispose him to future sexually violent offenses. Despite this finding, Dr. Korpi gave Webb a score of eight on the Static-99R and a score of seven on the Static-

2002R.[2] Dr. Korpi acknowledged Webb "scores well above average on both."

Dr. Owen concluded Webb did not have a diagnosable mental disorder to qualify him as an SVP. Nevertheless, Dr. Owen conducted a Static 99-R risk assessment and gave Webb a score of eight on the test.

Thereafter, updated evaluations were received from the 2015 evaluators, both of whom again concluded that Webb met the SVPA criteria. Dr. Patterson diagnosed Webb with unspecified paraphilic disorder and other specified personality disorder with antisocial personality traits and features. Dr. Patterson believed Webb's antisocial traits alone were sufficient to predispose him to commit future sexually violent acts. Dr. Patterson gave Webb a score of eight on the Static-99R, and a score of nine on the Static-2002R.

Dr. MacSpeiden diagnosed Webb with a disorder involving repeated fantasies, urges, or behaviors of sexual activity with a non-consenting person, which he believed predisposed Webb to commit sexually violent offenses in the future. Webb received a score of nine on the Static-99R, and a score of eight on the Static-2002R from Dr. MacSpeiden. Dr. MacSpeiden explained Webb's Static-99R score meant he had a 42 percent chance of committing another violent sexual offense in five years.

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[2] The Static 99-R and the Static-2002R risk assessment tests estimate the risk for sexual reoffense by looking at different actuarial factors. The median score on the Static-99R scale is two. A person who receives a score of eight is considered to be at a high risk of committing future sexually violent offenses.

Webb moved to dismiss the petition, urging the trial court to reevaluate its probable cause finding based on the conclusions drawn by the 2017 evaluators and not the updated 2015 evaluations.[3] The court denied the motion to dismiss and ordered the matter to proceed to trial with testimony from the 2015 and 2017 evaluators as well as testimony from Dr. Goldberg and two privately retained experts for the defense. The jury found Webb met the criteria for commitment under the SVPA. Webb timely appealed.

DISCUSSION

Webb challenges the trial court's denial of his motion to dismiss, contending the 2017 evaluators' conclusions rendered the petition moot. Alternatively, he argues the trial court should have conducted a new probable cause hearing. Finally, he claims it was error to admit the reports submitted by the 2015 and 2017 evaluators into evidence in a "consolidated" trial. None of these arguments warrant reversal.

I. The Procedural Requirements Under the SVPA

The Legislature enacted the SVPA in 1995 to address the danger to public safety posed by sexually violent predators. It created a civil commitment process that identifies persons who may continue to commit violent sex crimes after their release from prison, and requires that they be retained in a mental health facility until they may be safely released into the community. (Stats. 1995, ch. 763, § 1. P. 5921.)

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[3] Webb does not challenge the sufficiency of the evidence set forth in the 2015 evaluators' reports and testimony, only their admissibility at trial. Thus, we need not relate in detail their findings and conclusions. Webb also does not dispute that his sexual assault conviction qualifies as a violent sex crime under the SVPA.

A person is a SVP if: he or she (1) has been convicted of at least one sexually violent offense; (2) he or she has a current, diagnosed mental disorder; and (3) the mental disorder is such that it is likely the person will commit further sexually violent offenses if released. (§ 6600, subd. (a).)

The procedures for determining whether a person is an SVP take place in both an administrative and judicial setting. In the initial step, the Department of Corrections and Rehabilitation screens an inmate at least six months before his or her scheduled date for release from prison. (§ 6601, subd. (a)(1).) If it is determined that the person is likely to be an SVP, he or she is referred to the Department of State Hospitals for a "full evaluation" by two practicing psychiatrists or psychologists who use a standardized assessment protocol. (§ 6601, subds. (b)–(d).)

When both evaluators concur that the person meets the SVP criteria, the Director of State Hospitals forwards a request to the "attorney designated by the county" (in Los Angeles, the District Attorney) to file a petition for commitment. (§ 6601, subd. (d).) If one of the evaluators does not concur that the person meets the SVP criteria, two independent evaluators are designated for further examination of the person. (§ 6601, subd. (e).) These independent evaluators must have specified professional qualifications and must not be employed by the state. (§ 6601, subd. (g).) Both independent evaluators must concur that the person meets the SVP criteria before a petition to request commitment may be filed. (§ 6601, subd. (f).)

If the district attorney "concurs" with the Director of State Hospital's recommendation that an SVPA petition be filed, a petition for commitment shall be filed in the superior court.

(§ 6601, subd. (i).) Upon the filing of a petition, the superior court conducts a probable cause hearing. (§ 6602.)

If the court determines there is probable cause to believe the person fulfills the SVP criteria, the court shall order that a trial be conducted; if the court determines there is not probable cause, the court shall dismiss the petition. (§ 6602, subd. (a).) The person facing commitment as an SVP is entitled to the following rights: a jury trial, the assistance of counsel, the right to retain experts or other professionals to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. (§ 6603.) The trier of fact must unanimously determine beyond a reasonable doubt the person is an SVP. (§§ 6603, subd. (f), 6604.)

Because the SVPA requires the person have a "current medical disorder," evaluations may be updated or replaced at the request of the district attorney after a commitment petition has been filed. (§ 6603, subd. (c).) "However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings." (§ 6603, subd. (c)(1).)

If an updated evaluation results in a split opinion, the Director of State Hospitals must obtain two independent evaluations. (§ 6603, subd. (c)(1).) "However, although initial evaluations conducted under section 6601 must agree, a lack of concurrence between updated or replacement evaluations does not require dismissal of the petition. (*Gray v. Superior Court* (2002) 95 Cal.App.4th 322, 328 (*Gray*).) Rather, the updated evaluations' primary purpose is evidentiary or informational. (*Ibid.*) Mandatory dismissal is not required where one or both of

the later evaluators conclude the individual does not meet the criteria for commitment. (*Ibid.*)" (*Reilly v. Superior Court* (2013) 57 Cal.4th 641, 648 (*Reilly*).)

II. The Trial Court Properly Denied the Motion to Dismiss

Webb argues dismissal of the 2015 petition was required because the 2017 evaluators rendered the petition moot by concluding he did not meet the criteria for commitment under the SVPA. According to Webb, an intervening prison sentence "restarts" the SVP screening process and renders any previously filed petition moot. His theory is not supported by the SVPA or by caselaw.

The SVPA requires the Department of Corrections and Rehabilitation to refer an inmate for evaluation "whenever" it determines he or she may be an SVP. (§ 6601, subd. (a).) That occurred here. Webb was referred for evaluation under the SVPA by the Department of Corrections and Rehabilitation near the conclusion of his sentence for the in-prison offense. (§ 6601, subds. (b)–(d).) The Director of State Hospitals, in turn, complied with the SVPA by conducting the required evaluations, which resulted in negative findings, and thus no referral was made to the District Attorney. (§ 6601, subd. (f).)

Meanwhile, updated evaluations were provided for the still-valid 2015 petition. (§ 6603, subd. (c).) Because the trial court found probable cause, it was required to proceed to trial. (§ 6602, subd. (a).) Under these circumstances, the trial court did not err when it denied Webb's motion to dismiss. The procedural requirements of the SVPA were met.

This holding comports with existing case law. Courts have held that two SVPA proceedings may occur simultaneously. (*Litmon v. Superior Court* (2004) 123 Cal.App.4th 1156, 1171 [two separate SVP petitions may be consolidated into one trial]; *People v. Hedge* (1999) 72 Cal.App.4th 1466, 1472–1476 (*Hedge*) [pendency of appeal of first SVP petition did not divest trial court of jurisdiction to hear and decide second SVP petition].) Moreover, a multi-year delay does not divest the trial court of subject matter jurisdiction, which would trigger dismissal. (*Litmon v. Superior Court, supra,* 123 Cal.App.4th at p. 1171; *People v. Landau* (2013) 214 Cal.App.4th 1, 27; see also *Orozco v. Superior Court* (2004) 117 Cal.App.4th 170, 179; *People v. Ciancio* (2003) 109 Cal.App.4th 175, 189–190.) Instead, a delay merely requires updated or renewed evaluations to establish that the defendant's current mental health status meets the SVP criteria. (*Albertson v. Superior Court* (2001) 25 Cal.4th 796, 803.)

The Fourth District's opinion in *Gray* is particularly helpful in resolving this case because it presents substantially the same procedural posture. In *Gray,* an SVPA petition was brought against the defendant in 1996, based on two evaluations that concluded he met the criteria for commitment. (*Gray, supra*, at p. 324.) The matter languished until 1999, when three new evaluations were conducted, two of which concluded he no longer met the SVP criteria. The defendant moved to dismiss the petition, which was denied. (*Ibid.*) At that point, a probable cause hearing had been held, but trial did not begin until 2001. In 2001, four more evaluations were conducted, two of which concluded the defendant met the criteria for commitment, and two of which concluded he did not. (*Ibid.*) The defendant moved for summary judgment, which was denied. (*Id.* at pp. 324–325.)

In the ensuing writ petition to the Court of Appeal, the defendant relied only on the 1999 evaluations to argue the split of opinion required dismissal of the petition under section 6601, subdivision (f). Of the three 1999 evaluations, the defendant counted one as a replacement for an initial 1996 evaluator who was no longer available, and the other two as independent evaluators designated to resolve the difference of opinion pursuant to section 6601, subdivision (f). (*Gray, supra*, 95 Cal.App.4th at pp. 325–326.) The defendant argued dismissal was required because the two independent 1999 evaluators were split. The defendant ignored the 2001 evaluations completely. (*Id.* at p. 326.)

The *Gray* court rejected this argument, finding the SVPA commitment petition was properly filed in 1996 and any differences in opinion resulting from later evaluations did not require dismissal. It reasoned, "To say that a petition may not be filed unless certain conditions are met is not the same as to say that proceedings 'may not go forward' if those conditions cease to exist." (*Gray, supra*, 95 Cal.App.4th at p. 328.) Thus, "once a petition has been properly filed and the court has obtained jurisdiction, the question of whether a person is a sexually violent predator should be left to the trier of fact *unless* the prosecuting attorney is satisfied that proceedings should be abandoned." (*Id.* at p. 329.)

We are faced with substantially the same issues as those addressed in *Gray*. We reach a similar conclusion: the question whether Webb is an SVP was properly decided by the jury. As in *Gray,* it is undisputed here that the petition was properly filed because the 2015 evaluators concurred that Webb met the criteria for an SVP. (§ 6601, subd. (f).) Further, the trial court

found probable cause to believe Webb is an SVP. (§ 6602, subd. (a).) The trial court thus obtained jurisdiction. Under *Gray*, the 2017 evaluations did not subject the petition to dismissal, but instead served evidentiary or informational purposes.

We are not persuaded by Webb's attempt to distinguish *Gray* on the ground the defendant in that case did not serve an intervening prison sentence.[4] As discussed above, an intervening prison sentence does not restart the SVPA process once a valid petition has been filed. While the SVPA is silent as to the status of a previously filed petition that is interrupted by an intervening prison term, we decline to read into the SVPA a provision that dismisses this interrupted petition if subsequent evaluations do not concur that the SVP criteria are met. As *Gray* noted, "the Legislature certainly knows how to provide for dismissal when it wishes to do so." (*Gray, supra,* 95 Cal.App.4th at p. 322.) It did not do so here. Instead, the SVPA states a court "shall" order a trial be conducted once probable cause is found. (§ 6602, subd. (a).) We choose to follow the express terms of the SVPA.

Neither does *Turner v. Superior Court* (2003) 105 Cal.App.4th 1046 (*Turner*), a case relied upon by Webb, require dismissal under these circumstances. In *Turner,* the defendant was placed on parole when a jury found he was not an SVP. Another SVPA petition was filed after he was returned to custody when his parole was revoked. The *Turner* court held the prior

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[4] The *Gray* court stated the SVP petition "languished" for five years, but provided no explanation for the delay except to posit the parties were "probably" awaiting a California Supreme Court decision on the constitutionality of the SVPA. (*Gray, supra,* 95 Cal.App.4th at p. 324, fn. 3.) The *Gray* court gave no indication the reason for a delay in holding a trial would affect its analysis or holding.

jury determination did not bar the new petition, but the district attorney must show changed circumstances affecting the jury's prior factual determination. (*Id*. at p. 1050.) *Turner* is distinguishable because it addressed a new SVPA proceeding after the completion of a prior one, not an interrupted SVPA proceeding.

III. A New Probable Cause Hearing Was Not Required

Alternatively, Webb contends the trial court should have held a new probable cause hearing to address whether he met the SVPA criteria upon his release in 2017, since the prior hearing established probable cause based only on 2015 evaluations. We disagree.

The SVPA does not require a new probable cause hearing for the same reasons, discussed at length above, it does not require dismissal of the petition. Once probable cause is found, the SVPA requires the court to order and hold a trial, regardless of any delay in holding a trial, unless the district attorney decides to abandon the petition. (§ 6602, subd. (a); *Gray, supra,* 95 Cal.App.4th at p. 329.) The SVPA also requires updated or replacement evaluations to demonstrate the defendant's current mental state. (§ 6603, subd. (c).)

Under Webb's approach, a new probable cause hearing would be required in every case where there is a delay to trial. That is clearly not what is contemplated under the SVPA. Neither is Webb's approach supported by *Turner* or *Hedge,* which merely hold that a new probable cause hearing is required when a new petition is filed. (*Turner, supra,* 105 Cal.App.4th at p. 1051; *Hedge, supra,* 72 Cal.App.4th at p. 1474.) Webb has failed to set forth any support for his contention a new probable cause hearing should have been held.

IV. Webb Has Forfeited His Objection to the Admission of the Expert Testimony and Reports

Webb next challenges the admission of testimony from the 2015 and 2017 evaluators and their supporting reports. He argues the resulting "consolidated" trial was impermissible because it encompassed "both [] the petition that was brought and [] the petition that could not have been brought." Webb contends Dr. Goldberg's testimony, in particular, should not have been admitted on the additional ground he was not an independent evaluator in 2017. According to Webb, only the reports and testimony from the 2017 independent evaluators, Drs. Owen and Matosich, should have been admitted. There is no merit to these contentions.

As an initial matter, Webb has forfeited these issues because he did not raise them below. (Evid. Code, § 353 [an objection to the admission of evidence must be timely and clearly specify the basis of the objection]; *People v. Doolin* (2009) 45 Cal.4th 390, 448.) Webb contends he objected to the admission of this evidence at the hearing for the motion to dismiss as follows:

"Other than the fact that it is a very strange situation that we find ourselves in, which we have -- forgetting what expert witnesses I have or may have -- we have basically six experts from the Department of State Hospitals. Three of them say Mr. Webb is a sexually violent predator, and three of them say negative, he isn't a sexually violent predator. I don't know -- other than going forward at this point and wasting court resources in a trial that the prosecution can't win this is a situation where the prosecution has to show beyond a reasonable doubt that the allegations in the petition from 2015 are true.

And we now have three most recent reports that say it's not true. And they're not my doctors. They're the prosecution's doctors. And I don't know how a prosecutor can go forward and say, 'I want to try this case knowing that I can't meet my burden of proof.' "

We do not understand defense counsel's statements to be an objection to the admission of any evidence, let alone this particular evidence. We read defense counsel's statement to mean the petition should be dismissed because the district attorney could not meet her burden of proof.

In any event, there is no error or prejudice resulting from the admission of the evaluations, including Dr. Goldberg's. Thus, we reject Webb's related ineffective assistance of counsel argument on these issues. According to *Gray,* the evaluations may be considered by the trier of fact for evidentiary or informational purposes. (*Reilly, supra,* 57 Cal.4th at pp. 656–657.) The SVPA does not prohibit the admission of testimony from an expert such as Dr. Goldberg. Instead, the People may carry its burden at trial by presenting the testimony of fewer or more experts than what is required to file a petition. (*People v. Scott* (2002) 100 Cal.App.4th 1060, 1063 [two concurring experts are a procedural prerequisite to commence the petition process but the People's burden at trial is not the same as at some other procedural stage and may be met by fewer or more experts].)

Further, the updated reports from the 2015 evaluators, which support the petition, were properly admitted under the SVPA. (§ 6603, subd. (c).) As to the 2017 evaluations by Drs. Owen and Matosich, they aided Webb's defense because those evaluators concluded he did not meet the criteria for commitment under the SVPA. No prejudice resulted from their admission.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

WE CONCUR:

GRIMES, J.

WILEY, J.